



# Aviation insurance. Effects of the September 11 loss

Paola Serrano  
MAPFRE INDUSTRIAL

**This situation has caused aviation insurance prices to be multiplied by a minimum of 10, a factor which, together with the steep decline in passengers being experienced by the airlines, the cost increases due to the security measures which have been taken and the structural crisis which a large number of the airlines had already been going through, worsens the crisis of a sector which is key to the economic development of any country.**

Aviation insurance is a type of insurance contract characterised by its coverage of aspects which may affect an aircraft, its crew, passengers, transported goods, fleets and even third parties, whilst in flight or on ground, who - although not named in the policy - may be affected by the accident either personally or with regard to their assets. Therefore, according to each case, aviation insurance may be classed as property and casualty insurance,

third-party liability insurance or accident insurance.

Given the wide scope of the subject matter, this article will focus on property and casualty insurance (limiting itself to what is commonly known as hull insurance) and also third-party liability insurance, as these are basic covers provided by aviation insurance. Accident insurance, which follows the traditional techniques of this line of insurance and is characterised by the risks covered, will therefore not be dealt with.

**HULL INSURANCE:** its aim is to cover any damage affecting the aircraft in flight or on the ground - either in movement or stationary.

ORDINARY RISKS policies cover the operator against total or partial loss arising from risks such as fire, explosion, collision with a stationary or moving object, deviation of the aircraft from the runway, etc. These covers are subject to specific exclusions such as those referring to loss of lease, wear and tear, electronic or mechanical breakdowns or faults, confiscation, war or terrorism.

WAR AND TERRORISM policies complete the aforementioned coverage by protecting against war, terrorism, strikes, hijacks or confiscations.

**LIABILITY INSURANCE,** within which, with regard to be policyholder's activity, we

should distinguish between liabilities arising from regular or charter transport of passengers or goods, those of the companies providing services with regard to air navigation, those of the manufacturer or repairer of aircraft or those of companies dedicated to general aviation - which would include schools, fumigation, fire extinguishing, air ambulance, exhibitions, etc.

The liabilities of the operator operating in the transport of passengers or goods may be contractual or extra-contractual.

The contractual liabilities covered by the insurance are liability with regard to passengers and with regard to the transported cargo. In both cases the contractual liability is defined by the travel contract or the letter of transport together with national and international legislation.

Third-party liability insurance with regard to passengers covers the economic liability which may arise for the airline as a consequence of claims made against it by passengers or their successors for personal injury resulting from any accident taking place on board the aircraft or during boarding or disembarkation procedures, and is based on:

- The Air Navigation Act of July 21, 1960 and RD 37/2001 which updates the injury com-



pensations set by the Air Navigation Act 48/1960 of July 21.

- Regulation EC 2027/97
- The Warsaw Pact of October 12, 1929, modified by the additional protocols 1, 2 and 4 of Montreal, 1975.

Cargo liability insurance covers the amounts which the operator is obliged to pay as a consequence of accidental damage suffered by goods, or due to the loss of said goods, which may have occurred during the period of time from the beginning of boarding procedures until disembarkation has finished.

The operator's extra contractual liabilities with respect to third parties on the ground are covered through the third-party liability insurance. This covers economic liabilities incurred by the operator due to the sums which it is obliged to pay as a consequence of the death or injuries suffered by persons who are not passengers, crew or employees of the airline or due to damage to assets which are not under the care, custody or control of the airline. These covers however exclude, amongst others, claims arising from noise, pollution or electrical and electromagnetic interference.

The liabilities of companies providing ancillary services to air transport may be covered through a type of insurance which has become of increasing interest as public authorities have opened up the possibility of operating and carrying out activities within airport premises to private companies. This line of insurance can cover claims arising from damage caused by the supply of fuel, by instructions given by the control towers, by the defective working of airport installations...

The liabilities of the aircraft manufacturer or repairer are determined by claims which may be made by the buyer or owner of the aircraft arising from construction defects or de-

ficient repairs or maintenance carried out on the aircraft. The aim of this line of insurance is to provide cover against these types of claims including the possible grounding of the aircraft which may be required by the aeronautical authority as a result of these circumstances. This line of insurance provides the following types of covers:

- Product liability: through which injury to passengers and third parties caused by an accident in which it is proved that the cause has been a defective product is covered.
- Product liability including aircraft grounding, this in addition covers loss of profits caused by the grounding of an aircraft as required by a competent authority in aircraft safety.

Lastly, companies operating in the areas of fumigation and fire extinguishing tend to take out specific covers which protect them from claims arising from, for example, damage and injury caused by the use of chemical products.

The cover limits required by aviation insurance are very high since the total sum, in addition to the insured value of the aircraft, includes third-party liability cover which - in the case of an accident - will provide cover against claims made by passengers or their successors together with those of third parties on the ground as a result of damage and injury caused by aircraft. This situation brings about a large degree of dependency on international reinsurance markets; the London market being the traditional market of reference for aviation insurance.

The consequences arising from this situation of dependency showed themselves most clearly following the terrorist attacks of September 11. Making use of the right which insurers and reinsurers reserve in all policies to cancel cover for third-party liability caused

by acts of war and terrorism, on September 24 all airlines and other operators worldwide had their third-party liability cover for injury to non-passenger third parties arising from war and terrorism cancelled.

The reinsurers accepted the reinstatement of this cover whilst drastically reducing its limits to USD 50 million (EUR 55.25 million) in exchange for an additional premium of USD 1.25 (EUR 1.38) per passenger transported. These cover conditions were imposed by the reinsurance markets for all risks, irrespective of the area of flight, passengers transported, loss history, etc.

This solution did not however completely resolve the problem since, despite the price, the new limit offered was considered insufficient by the airlines, which therefore refused to continue flying under these conditions. Faced by this world situation, and with regard to the European Union, ECOFIN authorised member states to temporarily cover these risks. In Spain this aid is channelled through the Consorcio de Compensación de Seguros which on the state's behalf administers the reinsurance of non-passenger third-party liability arising from war and terrorism risks in excess of USD 50 million (EUR 55.25 million), and up to the limits of the original policies, for an initial period of 30 days, this period being extended successively until December 31, 2001.

This situation has caused aviation insurance prices to be multiplied by a minimum of 10, a factor which, together with the steep decline in passengers being experienced by the airlines, the cost increases due to the security measures which have been taken and the structural crisis which a large number of the airlines had already been going through, worsens the crisis of a sector which is key to the economic development of any country. ■